

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (For more detailed instructions, see separate instruction sheet.)

EDDYS N. GARCIA, as Administrator of the Goods, Chattels and Credits which were of WENDY SANTOS, deceased, EDDYS N. GARCIA, individually, EDDY I. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA, and KENNY J. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA

GINNETTI TRUCKING, LLC,

**PLAINTIFFS**

**DEFENDANTS**

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)	HAROLD J. DERSCHOWITZ, ESQ. (9910) ATTORNEYS (IF KNOWN)
80 Pine Street New York, New York 10005 (212) 943-1090	LESTER SCHWAB KATZ & DWYER, LLP 120 Broadway New York, NY 10271 (212) 964-6611 Attorneys for Defendant

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

**28 U.S.C. SECTION 1446(d)**

Has this or a similar case been previously filed in SDNY at any time? No?  Yes  Judge Previously Assigned

If yes, was this case Vol.  Invol.  Dismissed . No.  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

**NATURE OF SUIT**

(PLACE AN  IN ONE BOX ONLY)

**ACTIONS UNDER STATUTES**

CONTRACT	TORTS	FORFEITURE PENALTY	BANKRUPTCY	OTHER STATUES	
<input type="checkbox"/> 110 INSURANCE <input type="checkbox"/> 120 MARINE <input type="checkbox"/> 130 MILLER ACT <input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT <input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGEMENT <input type="checkbox"/> 151 MEDICARE ACT <input type="checkbox"/> 152 RECOVERY OF DEFULTED STUDENT LOANS (EXCL VETERANS) <input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS <input type="checkbox"/> 160 STOCKHOLDERS SUIT <input type="checkbox"/> 190 OTHER CONTRACT <input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY	<input type="checkbox"/> PERSONAL INJURY  <input type="checkbox"/> 310 AIRPLANE <input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY <input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER <input type="checkbox"/> 330 FEDERAL EMPLOYERS LIABILITY <input type="checkbox"/> 340 MARINE <input type="checkbox"/> 345 MARINE PRODUCT LIABILITY <input type="checkbox"/> 350 MOTOR VEHICLE <input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY <input type="checkbox"/> 360 OTHER PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY  <input type="checkbox"/> 362 PERSONAL INJURY MED-MALPRACTICE <input type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY <input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY  <input type="checkbox"/> PERSONAL PROPERTY  <input type="checkbox"/> 370 OTHER FRAUD <input type="checkbox"/> 371 TRUTH IN LENDING <input type="checkbox"/> 380 OTHER PERSONAL PROPERTY <input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 610 AGRICULTURE <input type="checkbox"/> 620 FOOD & DRUG <input type="checkbox"/> 625 DRUG RELATED SEIZURE OF PROPERTY  <input type="checkbox"/> 21 USC 881 LIQUOR LAWS <input type="checkbox"/> 640 R.R. TRUCK <input type="checkbox"/> 650 AIRLINE REGS <input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH  <input type="checkbox"/> 690 OTHER LABOR  <input type="checkbox"/> 710 FAIR LABOR STANDARDS <input type="checkbox"/> 720 LABOR/MGMT RELATIONS <input type="checkbox"/> 730 LABOR/MGMT REPORTING & DISCLOSURE ACT <input type="checkbox"/> 740 RAILWAY LABOR ACT <input type="checkbox"/> 790 OTHER LABOR LITIGATION <input type="checkbox"/> 791 EMPL. RET.INC. SECURITY ACT	<input type="checkbox"/> 422 APPEAL (801) <input type="checkbox"/> 423 WITHDRAWAL 28USC  <input type="checkbox"/> PROPERTY RIGHTS  <input type="checkbox"/> SOCIAL SECURITY  <input type="checkbox"/> FEDERAL TAX SUITS  <input type="checkbox"/> 870 TAXES <input type="checkbox"/> 871 IRS THIRD PARTY 20 USC 7609	<input type="checkbox"/> 400 STATE REAPPORTIONMENT <input type="checkbox"/> 410 ANTI-TRUST <input type="checkbox"/> 430 BANKS AND BANKING <input type="checkbox"/> 450 COMMERCE ICC/ETC <input type="checkbox"/> 460 DEPORTATION <input type="checkbox"/> 810 SELECTIVE SERVICE <input type="checkbox"/> 850 SECURITIES/ COMMODITIES EXCHANGE <input type="checkbox"/> 875 CUSTOMER CHALLENGE 12 USC 3410 <input type="checkbox"/> 891 AGRICULTURAL ACTS <input type="checkbox"/> 892 ECONOMIC STABILIZATION ACT <input type="checkbox"/> 893 ENVIRONMENTAL MATTERS <input type="checkbox"/> 894 ENERGY ALLOCATION ACT <input type="checkbox"/> 895 FREEDOM OF INFORMATION ACT  <input type="checkbox"/> 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE <input type="checkbox"/> 950 CONSTITUTIONALITY OF STATE STATUTES <input type="checkbox"/> 890 OTHER STATUTORY ACTIONS
	<b>ACTIONS UNDER STATUES</b>				
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 LAND CONDEMNATION <input type="checkbox"/> 220 FORECLOSURE <input type="checkbox"/> 230 RENT LEASE & EJECTION <input type="checkbox"/> 240 TORTS TO LAND <input type="checkbox"/> 245 TORT PRODUCT LIABILITY <input type="checkbox"/> 290 ALL OTHER REAL PROPERTY	<input type="checkbox"/> 441 VOTING <input type="checkbox"/> 442 EMPLOYMENT <input type="checkbox"/> 443 HOUSING <input type="checkbox"/> 444 WELFARE <input type="checkbox"/> 440 OTHER CIVIL RIGHTS	<input type="checkbox"/> 510 MOTIONS TO VACATE SENTENCE 20 USC (2255)  <input type="checkbox"/> 530 HABEAS CORPUS <input type="checkbox"/> 535 DEATH PENALTY <input type="checkbox"/> 540 MANDAMUS & OTHER <input type="checkbox"/> 550 CIVIL RIGHTS <input type="checkbox"/> 555 PRISON CONDITION			

(Check if demanded in complaint):

CHECK IF THIS IS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y?

IF SO, STATE:

DEMAND \$

OTHER

JUDGE

DOCKET NUMBER

Check YES only if demanded in complaint  
JURY DEMAND:  YES  NO

NOTE: Please submit at the time of filing explanation of why cases are deemed related.

## ORIGIN

(PLACE AN X IN ONE BOX ONLY)

1. Original Proceeding  2. Removed from State Court  3. Remanded from Appellate Court  4. Reinstated or Reopened  5. Transferred from (Specify District)  6. Multidistrict Litigation  7. Appeal to District Judge from Magistrate Judge Judgement

**BASIS OF JURISDICTION**

(PLACE AN X IN ONE BOX ONLY)

1. U.S. PLAINTIFF  2. U.S. DEFENDANT  3. FEDERAL QUESTION (U.S. NOT A PARTY)  4. DIVERSITY

**IF DIVERSITY, INDICATE CITIZENSHIP BELOW  
(28 USC 1332,1441)****CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)**

(Place an (X) in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF <input type="checkbox"/> 3	DEF <input checked="" type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF <input type="checkbox"/> 5	DEF <input checked="" type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	FOREIGN NATION	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6

**PLAINTIFF(S) ADDRESS(ES) AND COUNTY (IES) (Calendar Rule 4(A))**  
2786 Jerome Avenue, Bronx, New York 10468

**DEFENDANT(S) ADDRESS(ES) AND COUNTY (IES) (Calendar Rule 4 (A))**  
58 Hemmingway Avenue, East Haven, CT 06512

**DEFENDANT(S) ADDRESS UNKNOWN**

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check One: **THIS ACTION SHOULD BEEN ASSIGNED TO:**  
(DO NOT check either box if this is a PRISONER PETITION.)  WHITE PLAINS  FOLEY SQUARE

DATE 5-23-07 SIGNATURE OF ATTORNEY OF RECORD  ADMITTED TO PRACTICE IN THIS DISTRICT  
M.J. O'leary  NO  
 YES (DATE ADMITTED Mo. 10 Yr (85))  
RECEIPT# Attorney Bar Code # 9910

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

James M. Parkison, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE LYNCH

07 CIV 4045

LSK&D #: 114-6015 / 881101  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EDDYS N. GARCIA, as Administrator of the Goods, Chattels and Credits which were of WENDY SANTOS, deceased, EDDYS N. GARCIA, individually, EDDY I. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA, and KENNY J. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA,

Plaintiffs,

-against-

GINNETTI TRUCKING, LLC,

Defendant.

Docket No.:

NOTICE OF REMOVAL  
(From New York  
Supreme Court, County  
of Bronx, Index No.:  
14426/07)

TRIAL BY JURY  
DEMANDED



Defendant, GINNETTI TRUCKING, LLC, by its attorneys, LESTER SCHWAB KATZ & DWYER, LLP, hereby files this Notice of Removal of the above-captioned action to the United States District Court for the Southern District of New York, from the Supreme Court of the State of New York, County of Bronx, where the action is now pending, as provided by Title 28 U.S.C. Code, Chapter 89 and state the following upon information and belief:

1. GINNETTI TRUCKING, LLC, is the defendant in the above-entitled action.
2. The above-entitled action was commenced in the Supreme Court of the State of New York, County of Bronx, and is now pending in that Court. This Notice is hereby submitted to the Court for filing within thirty (30) days of the date that the Summons and Complaint was allegedly served upon said defendant.

3. This action is a civil action for personal injury and wrongful death, and the United States District Court for the Southern District of New York has jurisdiction by reason of the diversity of citizenship of the parties.

4. Plaintiffs are now and at the time the State action was commenced, citizens of the State of New York. The defendant, GINNETTI TRUCKING, LLC, is now and at the time the State action was commenced, a Connecticut Corporation, whose principal place of business is 58 Hemmingway Avenue, East Haven, CT 06512. The matter in controversy exceeds, exclusive of costs and disbursements, the sum or value of \$75,000. No change of citizenship of parties has occurred since the commencement of the action. The defendant is not a citizen of the State in which the action was brought.

5. A copy of all process, pleadings and Orders served upon defendant are filed with this Notice.

6. Defendant will give written notice of the filing of this Notice as required by 28 U.S.C. Section 446(d).

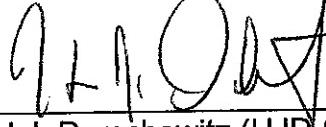
7. A copy of this Notice will be filed with the Clerk of the Supreme Court of the State of New York, County of Bronx, as required by 28 U.S.C. Section 1446(d).

**WHEREFORE**, the defendant requests that this action proceed in this Court as an action properly removed to it.

Dated: New York, New York  
May 23, 2007

Respectfully submitted,

LESTER SCHWAB KATZ & DWYER, LLP

  
Harold J. Derschowitz (HJD-9910)  
Attorneys for Defendant  
GINNETTI TRUCKING, LLC,  
120 Broadway  
New York, New York 10271  
(212) 964-6611

TO:

GAIR, GAIR, CONASON,  
STEIGMAN & MACKAUF  
80 Pine Street  
New York, New York 10005  
(212) 943-1090  
Attorneys for Plaintiffs

LSK&D #: 114-6015 / 881116  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

EDDYS N. GARCIA, as Administrator of the Goods, Chattels and Credits which were of WENDY SANTOS, deceased, EDDYS N. GARCIA, individually, EDDY I. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA, and KENNY J. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA,

X  
**Index No.: 14426/07**

**NOTICE TO STATE  
COURT CLERK OF THE  
FILING OF THE NOTICE  
OF REMOVAL**

Plaintiffs,

-against-

GINNETTI TRUCKING, LLC,

Defendant.

X

**TO: THE JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK,  
COUNTY OF BRONX**

Pursuant to 28 U.S.C. Section 1446(d), the defendant files herewith a true copy of the Notice of Removal previously filed in the United States District Court for the Southern District of New York, and a true copy of the Notice of Filing of the Notice of Removal.

Dated: New York, New York  
May 23, 2007

Respectfully submitted,

LESTER SCHWAB KATZ & DWYER, LLP



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Harold J. Derschowitz (HJD-9910)  
Attorneys for Defendant  
GINNETTI TRUCKING, LLC,  
120 Broadway  
New York, New York 10271  
(212) 964-6611

TO:

GAIR, GAIR, CONASON,  
STEIGMAN & MACKAUF  
80 Pine Street  
New York, New York 10005  
(212) 943-1090  
Attorneys for Plaintiffs

Supreme Court of the State of New York  
 County of BRONX

EDDYS N. GARCIA, as Administrator of the Goods, Chattels and Credits which were of WENDY SANTOS, deceased, EDDYS N. GARCIA, individually, EDDY I. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA, and KENNY J. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA,

*Plaintiff(s)*

against

GINNETTI TRUCKING, LLC,

*Defendant(s)*

Index No. 14426/07

Date purchased April 25, 2007

Plaintiff(s) designate(s)

BRONX

County as the place of trial.

The basis of the venue is Plaintiff's place of residence.

**SUPPLEMENTAL  
SUMMONS**

Plaintiff(s) reside(s) at  
 2786 Jerome Avenue  
 Bronx, NY 10468

County of ~~BRONX~~

RECEIVED  
MAY 2 AM 10:  
BRONX COUNTY CLERK

To the above named Defendant(s)

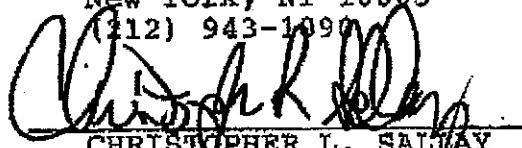
You are hereby summoned to answer the complaint in this action and to serve a copy of your answer; or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, April 30, 2007

GAIR, GAIR, CONASON,  
 STEIGMAN & MACKAUF  
 Attorney(s) for Plaintiff

Office and Post Office Address

80 Pine Street  
 New York, NY 10005  
 (212) 943-1090

  
 CHRISTOPHER L. SALAY

Defendant's address:

GINNETTI TRUCKING, LLC  
 58 Hemingway Avenue  
 East Haven, CT 06512

A TRUE COPY ATTEST

  
 DANIEL R. RUSSELBACH  
 PROCESS SERVER

DANIEL R. RUSSELBACH

S:sm

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

EDDYS N. GARCIA, as Administrator of the Goods, Chattels and Credits which were of WENDY SANTOS, deceased, EDDYS N. GARCIA, individually, EDDY I. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA, and KENNY J. GARCIA, an infant by his father and natural guardian, EDDYS N. GARCIA,

VERIFIED  
AMENDED  
COMPLAINT

Index #  
14426/07

Plaintiff,

-against-

GINNETTI TRUCKING, LLC,

Defendant.

2007 MAY - 2 AM 10:15  
COURT CLERK  
BRONX COUNTY

RECEIVED

Plaintiff, complaining of the defendant, by his attorneys, Gair, Gair, Conason, Steigman & Mackauf, respectfully allege as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON  
BEHALF OF THE PLAINTIFF AS ADMINISTRATOR

1. Prior to the commencement of this action, and more particularly, on the 19<sup>th</sup> day of December, 2006, the plaintiff, EDDYS N. GARCIA, was duly appointed Administrator of the Goods, Chattels and Credits of WENDY SANTOS, deceased, by Order of the Honorable Lee L. Holzman, Surrogate of the County of Bronx, State of New York, has duly qualified as such, and is now acting in said capacity.

2. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, was a Connecticut corporation.

3. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, was licensed to do business in the State of New York.

4. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, obtained and held Highway Use Tax permits for its tractors with the State of New York in order to do business in the State of New York.

5. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, obtained and held Cargo Tank Inspection registrations for its trailers with the State of New York in order to do business in the State of New York.

6. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, did business in the State of New York.

7. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, did business in the County of Bronx.

8. The acts complained of herein arose out of a transaction of business by the defendant, GINNETTI TRUCKING, LLC, in the State of New York.

9. The acts complained of herein arose out of a transaction of business by the defendant, GINNETTI TRUCKING, LLC, in the County of Bronx.

10. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in the State of New York, including the County of Bronx.

11. Upon information and belief, the defendant, GINNETTI TRUCKING, LLC, expected or should reasonably have expected the acts complained of herein, to have consequences in the State of New York, and the defendant derives substantial revenue from interstate or international commerce.

12. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, was in the business of intermodal transportation, linehaul transportation services, interstate trucking and other work services, including the interstate transportation of petroleum.

13. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING,

LLC, was the owner and operator of a tractor bearing Connecticut registration number 41107-A, for the year 2006.

14. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, was the owner and operator of a trailer bearing Connecticut registration number V-69624, for the year 2006.

15. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, was the owner and operator of a tractor bearing New York State Highway Use Tax number 438387.

16. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, was the owner and operator of a trailer bearing New York State Cargo Tank Inspection number 1-03 UC P I 1-06 K-EPA27.

17. Upon information and belief, at all times hereinafter mentioned, the defendant, GINNETTI TRUCKING, LLC, its agents, servants and employees, operated and controlled the aforesaid tractor trailer.

18. Upon information and belief, prior to July 2, 2006, the defendant, GINNETTI TRUCKING, LLC, its agents, servants and employees, inspected, examined, evaluated, diagnosed, serviced, repaired and maintained the aforesaid tractor trailer.

19. Upon information and belief, prior to July 2, 2006, the defendant, GINNETTI TRUCKING, LLC, its agents, servants and employees, inspected, examined, evaluated, diagnosed, serviced, repaired and maintained the aforesaid tractor trailer, including the tandem wheels and parts.

20. On July 2, 2006, the aforesaid tractor trailer was traveling eastbound on Interstate Route 95, in the area of Exit 9, in the Town of Darien, State of Connecticut, when the left side tandem wheels dislocated from the 5<sup>th</sup> axle of the tractor trailer and traveled into the westbound lane, striking the front windshield of plaintiff's vehicle which had been traveling westbound on Interstate Route 95.

21. On July 2, 2006, the plaintiff's decedent, WENDY SANTOS, was a passenger in the plaintiff's vehicle.

22. The aforesaid occurrence was caused and contributed to by the negligence of the defendant, its agents, servants and/or employees in the inspection, examination, evaluation, diagnosis, servicing, repair and maintenance of the aforementioned tractor trailer, and in particular, the tandem wheels and parts; in failing to lubricate the tandem wheels and parts; in failing to diagnose and detect the problem with the tandem wheels; in

failing to properly and adequately service and repair the tandem wheels; in failing to service and repair the problem with the tandem wheels; in providing a dangerous and defective tractor and trailer; in affixing the tandem wheels to the tractor trailer which were not lubricated; in affixing the tandem wheels to the tractor trailer in a careless and negligent manner; in failing to insure that the tandem wheels were properly and adequately lubricated; in failing to insure that the tandem wheels were properly and adequately secured to the tractor trailer; in maintaining the tandem wheels in a careless and negligent manner; in failing to properly and adequately inspect the tandem wheels; in negligently certifying the tractor trailer as road worthy according to FHWA and FMCSR guidelines; in placing tandem wheels on the tractor trailer which were not lubricated; in placing tandem wheels on the tractor trailer which were dangerous, hazardous and unsafe; in carelessly and negligently supervising, training and advising its employees; in affixing the tandem wheels to the tractor trailer in an improper, dangerous and careless manner so that they separated from the vehicle thereby striking the plaintiff's vehicle; in causing, permitting and allowing the

tandem wheels to separate from the tractor trailer; in causing, permitting and allowing the aforementioned tractor trailer to be driven in a dangerous, hazardous and unsafe condition; in violating the traffic laws, rules and regulations, statutes and ordinances then and there prevailing, including but not limited to Sections 396.3 and 396.3(a)(1) of the Federal Motor Carrier Regulations; in allowing a condition to exist which permitted tandem wheels to separate from the tractor trailer; and in causing, permitting and allowing the aforementioned tractor trailer to be driven in a condition which they knew or should have known was inherently dangerous, hazardous and unsafe.

23. By reason of the foregoing, the plaintiff's decedent, WENDY SANTOS, died on July 2, 2006.

24. By reason of the foregoing, the plaintiff's decedent left surviving her as next of kin her husband, EDDYS N. GARCIA, and her sons, EDDY I. GARCIA, age, 14, and KENNY J. GARCIA, age 10.

25. The amounts sought exceed the jurisdictional limits of all Courts which would otherwise have jurisdiction.

26. Upon information and belief, the plaintiff's decedent had sustained a serious injury as defined in Subdivision (d) of Section 5102 of the Insurance Law.

27. Upon information and belief, the plaintiff's decedent had sustained economic loss greater than basic economic loss as defined in Subdivision (a) of Section 5102 of the Insurance Law.

28. It is hereby alleged, pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

AS AND FOR A SECOND CAUSE OF ACTION ON  
BEHALF OF THE PLAINTIFF, AS ADMINISTRATOR

29. The plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this complaint marked and designated "1" through "28" inclusive, with the same force and effect as if more fully set forth herein at length.

30. By reason of the foregoing, the plaintiff's decedent, WENDY SANTOS, was caused to sustain severe physical pain and mental anguish as a result of the aforementioned occurrence, including fear of impending death, until the time of her death.

31. The amounts sought exceed the jurisdictional limits of all Courts which would otherwise have jurisdiction.

32. Upon information and belief, the plaintiff's decedent had sustained a serious injury as defined in Subdivision (d) of Section 5102 of the Insurance Law.

33. Upon information and belief, the plaintiff's decedent had sustained economic loss greater than basic economic loss as defined in Subdivision (a) of Section 5102 of the Insurance Law.

34. It is hereby alleged, pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

AS AND FOR A THIRD CAUSE OF ACTION  
ON BEHALF OF THE PLAINTIFF, INDIVIDUALLY

35. The plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this complaint marked and designated "1" through "34" inclusive, with the same force and effect as if more fully set forth herein at length.

36. On July 2, 2006, the plaintiff, EDDYS N. GARCIA, was the operator of the plaintiff vehicle when the front windshield of said vehicle was struck by the left side tandem wheels of the aforesaid tractor trailer.

37. By reason of the foregoing, the plaintiff, EDDYS N. GARCIA, sustained injuries to his limbs and body, a severe shock to his nervous system, and certain internal injuries, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and upon information and belief, some of these injuries are of a permanent and lasting nature; that the plaintiff has been confined to his bed and home as a result thereof; has been caused to abstain from the duties of his vocation; and has been caused to expend and become obligated to expend sums of money for medical attention and medicines.

38. The amounts sought exceed the jurisdictional limits of all Courts which would otherwise have jurisdiction.

39. Upon information and belief, the plaintiff's decedent had sustained a serious injury as defined in Subdivision (d) of Section 5102 of the Insurance Law.

40. Upon information and belief, the plaintiff's decedent had sustained economic loss greater than basic economic loss as defined in Subdivision (a) of Section 5102 of the Insurance Law.

41. It is hereby alleged, pursuant to CPLR 1603, that the foregoing cause of action is exempt from the

operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

AS AND FOR A FOURTH CAUSE OF ACTION ON  
BEHALF OF THE INFANT PLAINTIFF EDDY I. GARCIA

42. The plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this complaint marked and designated "1" through "41" inclusive, with the same force and effect as if more fully set forth herein at length.

43. On July 2, 2006, the infant plaintiff, EDDY I. GARCIA, was a passenger in the plaintiff's vehicle when the front windshield of said vehicle was struck by the left side tandem wheels of the aforesaid tractor trailer.

44. By reason of the foregoing, the infant plaintiff, EDDY I. GARCIA, sustained injuries to his limbs and body, a severe shock to his nervous system, and certain internal injuries, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and upon information and belief, some of these injuries are of a permanent and lasting nature; that the plaintiff has been confined to his bed and home as a result thereof; and has been caused to expend and become obligated to expend sums of money for medical attention and medicines.

45. The amounts sought exceed the jurisdictional limits of all Courts which would otherwise have jurisdiction.

46. Upon information and belief, the infant plaintiff had sustained a serious injury as defined in Subdivision (d) of Section 5102 of the Insurance Law.

47. Upon information and belief, the infant plaintiff had sustained economic loss greater than basic economic loss as defined in Subdivision (a) of Section 5102 of the Insurance Law.

48. It is hereby alleged, pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

AS AND FOR A FIFTH CAUSE OF ACTION ON  
BEHALF OF THE INFANT PLAINTIFF KENNY J. GARCIA

49. The plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this complaint marked and designated "1" through "48" inclusive, with the same force and effect as if more fully set forth herein at length.

50. On July 2, 2006, the infant plaintiff, KENNY J. GARCIA, was a passenger in the plaintiff's vehicle when

the front windshield of said vehicle was struck by the left side tandem wheels of the aforesaid tractor trailer.

51. By reason of the foregoing, the infant plaintiff, KENNY J. GARCIA, sustained injuries to his limbs and body, a severe shock to his nervous system, and certain internal injuries, and has been caused to suffer severe physical pain and mental anguish as a result thereof, and upon information and belief, some of these injuries are of a permanent and lasting nature; that the plaintiff has been confined to his bed and home as a result thereof; and has been caused to expend and become obligated to expend sums of money for medical attention and medicines.

52. The amounts sought exceed the jurisdictional limits of all Courts which would otherwise have jurisdiction.

53. Upon information and belief, the infant plaintiff had sustained a serious injury as defined in Subdivision (d) of Section 5102 of the Insurance Law.

54. Upon information and belief, the infant plaintiff had sustained economic loss greater than basic economic loss as defined in Subdivision (a) of Section 5102 of the Insurance Law.

55. It is hereby alleged, pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

AS AND FOR A SIXTH CAUSE OF ACTION  
ON BEHALF OF THE PLAINTIFF, INDIVIDUALLY

56. The plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this complaint marked and designated "1" through "55" inclusive, with the same force and effect as if more fully set forth herein at length.

57. At and about the times immediately preceding, contemporaneous with and following the occurrence complained of herein, the plaintiff, EDDYS N. GARCIA, was caused to be placed within the area and zone of danger of vulnerability to physical harm and defendant's actionable fault as alleged in this complaint and from the proximate effect thereof.

58. The plaintiff, EDDYS N. GARCIA, while within the zone of danger, was caused under all of the circumstances surrounding the occurrence, to have imposed upon his view of observation, the knowledge that severe harm and serious peril to his wife, WENDY SANTOS, and his sons, EDDY I. GARCIA and KENNY J. GARCIA.

59. By reason of the foregoing, the plaintiff, EDDYS N. GARCIA, has been caused to suffer severe mental and emotional trauma, distress, disturbance, depression and anguish as a result of the entirety of the occurrence and the adverse effects thereof upon his own well-being and the well-being of his loved ones, WENDY SANTOS, EDDY I. GARCIA and KENNY J. GARCIA, and upon information and belief, some of these injuries are of a permanent and lasting nature.

60. The amounts sought exceed the jurisdictional limits of all Courts which would otherwise have jurisdiction.

61. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

AS AND FOR A SEVENTH CAUSE OF ACTION ON  
BEHALF OF THE INFANT PLAINTIFF EDDY I. GARCIA

62. The plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this complaint marked and designated "1" through "61" inclusive, with the same force and effect as if more fully set forth herein at length.

63. At and about the times immediately preceding, contemporaneous with and following the occurrence complained of herein, the infant plaintiff, EDDY I. GARCIA, was caused to be placed within the area and zone of danger of vulnerability to physical harm and defendant's actionable fault as alleged in this complaint and from the proximate effect thereof.

64. The infant plaintiff, EDDY I. GARCIA, while within the zone of danger, was caused under all of the circumstances surrounding the occurrence, to have imposed upon his view of observation, the knowledge that severe harm and serious peril to his mother and father, WENDY SANTOS and EDDYS N. GARCIA, and his brother, KENNY J. GARCIA.

65. By reason of the foregoing, the infant plaintiff, EDDY I. GARCIA, has been caused to suffer severe mental and emotional trauma, distress, disturbance, depression and anguish as a result of the entirety of the occurrence and the adverse effects thereof upon his own well-being and the well-being of his loved ones, WENDY SANTOS, EDDYS N. GARCIA and KENNY J. GARCIA, and upon information and belief, some of these injuries are of a permanent and lasting nature.

66. The amounts sought exceed the jurisdictional limits of all Courts which would otherwise have jurisdiction.

67. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

AS AND FOR A EIGHTH CAUSE OF ACTION ON BEHALF OF THE INFANT PLAINTIFF KENNY J. GARCIA

68. The plaintiff repeats, reiterates and realleges each and every allegation contained in those paragraphs of this complaint marked and designated "1" through "67" inclusive, with the same force and effect as if more fully set forth herein at length.

69. At and about the times immediately preceding, contemporaneous with and following the occurrence complained of herein, the infant plaintiff, KENNY J. GARCIA, was caused to be placed within the area and zone of danger of vulnerability to physical harm and defendant's actionable fault as alleged in this complaint and from the proximate effect thereof.

70. The infant plaintiff, KENNY J. GARCIA, while within the zone of danger, was caused under all of the

circumstances surrounding the occurrence, to have imposed upon his view of observation, the knowledge that severe harm and serious peril to his mother and father, WENDY SANTOS and EDDYS N. GARCIA, and his brother, EDDY I. GARCIA.

71. By reason of the foregoing, the infant plaintiff, KENNY J. GARCIA, has been caused to suffer severe mental and emotional trauma, distress, disturbance, depression and anguish as a result of the entirety of the occurrence and the adverse effects thereof upon his own well-being and the well-being of his loved ones, WENDY SANTOS, EDDYS N. GARCIA and EDDY I. GARCIA, and upon information and belief, some of these injuries are of a permanent and lasting nature.

72. The amounts sought exceed the jurisdictional limits of all Courts which would otherwise have jurisdiction.

73. It is hereby alleged pursuant to CPLR 1603, that the foregoing cause of action is exempt from the operation of CPLR 1601, by reason of one or more of the exemptions provided in CPLR 1602.

WHEREFORE, the plaintiff, demands judgment against the defendant, together with the costs, interest and disbursements of this action.

Dated: New York, New York  
April 30, 2007

GAIR, GAIR, CONASON,  
STEIGMAN & MACKAUF  
Attorneys for Plaintiffs  
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New York, NY 10005  
(212) 943-1090

A TRUE COPY I TEST  
  
PROCESS SERVER  
DANIEL R. RUSSBACH

STATE OF NEW YORK )  
: S.S.:  
COUNTY OF NEW YORK )

CHRISTOPHER L. SALLAY, the undersigned, an attorney admitted to practice in the Courts of New York State, states that he is a member of the firm of Gair, Gair, Conason, Steigman & Mackauf attorneys for the plaintiff in the within action; that deponent has read the foregoing Verified Amended Complaint and knows its contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes them to be true. Deponent further states that the reason this verification is made by your deponent and not by the plaintiff is that the plaintiff is not within the county where deponent maintains his office.

The grounds of deponent's belief as to all matters not stated upon deponent's own knowledge are consultations had with the plaintiff and investigation and data in deponent's possession.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: New York, New York  
April 30, 2007

  
CHRISTOPHER L. SALAZAR

CHRISTOPHER L. SALLIK

A TRUE COPY ATTEST  
*Daniel Russbach*

**PROCESS SERVER  
DANIEL R. RUSSEBACH**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
EDDYS N. GARCIA, as Administrator of the  
Goods, Chattels and Credits which were of  
WENDY SANTOS, deceased, EDDYS N.  
GARCIA, individually, EDDY I. GARCIA, an  
infant by his father and natural guardian,  
EDDYS N. GARCIA, and KENNY J. GARCIA,  
an infant by his father and natural guardian,  
EDDYS N. GARCIA,

Docket No.:

Plaintiffs,

-against-

GINNETTI TRUCKING, LLC,

Defendant.

-----X

**CIVIL COVER SHEET, FEDERAL SDNY STATEMENT PURSUANT TO FED. R. CIV.  
P. 7.1, NOTICE OF REMOVAL AND NOTICE TO STATE COURT CLERK OF THE  
FILING OF THE NOTICE OF REMOVAL**

**LESTER SCHWAB KATZ & DWYER, LLP**

**ATTORNEYS FOR      Defendant  
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